REGD. GOA · 5

Panaji, 13th February, 1992 (Magha 24, 1913)

SERIES II No. 46

OFFICIAL GAZETTE

GOVERNMENT OF GOA

EXTRAORDINARY

GOVERNMENT OF GOA

Social Welfare Department

—

Notification

No. 13-26-89/SWD

Read :— Government Notification No. 12-27-81--LAWD dated 27.3.1986.

Government is pleased to reconstitute a Committee constituted vide Notification cited above, under clause 6 (b) of Goa, Daman and Diu grant of Financial Assistance to the victims of Atrocities Rules, 1985 to estimate the grant of compensation/financial assistance to the victims of atrocities on Scheduled Castes and Scheduled Tribes in the State of Goa with the following members :

1.	Minister for Social Welfare	.... Chairman
2.	Secretary (Social Welfare)	.... Member
3.	Inspector General of Police, Panaji.	..... Member
4.	Shri Deu G. Mandrekar, M. L. A.	.... Member
5.	Director of Health Services, Panaji.	.... Member
6.	The Collector, North-Goa, Panaji.	.... Member
7.	The Collector, South-Goa, Margao.	.... Member
8.	Director of Social Welfare, Panaji.	.... Member Secretary

The unofficial member of the Committee will be entitled to T. A. admissible to Grade I Officers.

The tenure of the Committee will be for a period of 3 years.

By order and in the name of the Governor of Goa.

E. Silveira, Under Secretary to the Government of Goa (Social Welfare).

Panaji, 9th September, 1991.

Department of Tourism

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Notification

No. 8/1/86-TDC (T)

Read : Notification No. 8/1/86-TDC (T) dated 19/6/1991.
Corrigendum dated 12/7/1991.

In exercise of the powers conferred by article 107 of the Articles of Association of the Goa Tourism Development Corporation Limited, the Governor of Goa hereby appoints the Representative of the Goa Travel and Tourism Club, C/o Directorate of Tourism, Patto, Panaji-Goa, as Director, to fill in the vacancy caused by the resignation of Shri Anand Naik, Bandora, Ponda-Goa.

By order and in the name of the Governor of Goa.

Maria A. Rodrigues, Under Secretary to the Govt. of Goa (Tourism Department).

Panaji, 10th September, 1991.

Public Health Department

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Corrigendum

No. 8-35-89-II/PHD

Read: Order No. 8-35-89-II/PHD dated 8.8.91.

The first para of the above referred Govt. Order may be substituted and read as follows :

" On recommendation of the Goa Public Service Commission vide its letter No. COM/I/5/30(10)/89 dated 4.7.91, Govt. is pleased to appoint Dr. (Kum.) Premila D'Souza to the post of Resident Pathologist, Goa Medical College, Panaji on temporary basis on an initial pay to be fixed according to the rules in the pay scale of Rs. 2200-75-2800-EB-100-4000 with immediate effect as per terms and conditions contained in the Memorandum cited above."

By order and in the name of the Governor of Goa.

P. S. Nadkarni, Under Secretary (Health).

Panaji, 23rd September, 1991.

Corrigendum

No. 85/4/81-I/PHD

Read : Government order No. 85/4/81-I/PHD dated 23.8.91.

The words "Primary Health Centre, Bicholim" which appear in the Government Order No. 85/4/81-I/PHD dated 23.8.91 may be read as "Cottage Hospital, Sanquelim".

By order and in the name of the Governor of Goa.

P. S. Nadkarni, Under Secretary (Health).

Panaji, 10th September, 1991.

Department of Labour

Order

No. 28/2/88-LAB

The following Award given by the Industrial Tribunal, Goa, Daman and Diu is hereby published as required under the provisions of Section 17 of the Industrial Dispute Act, 1947 (Central Act XIV of 1947).

By order and in the name of the Governor of Goa.

L. J. Menezes Pais, Under Secretary (Labour).

Panaji, 24th May, 1990.

IN THE INDUSTRIAL TRIBUNAL GOVERNMENT OF GOA AT PANAJI

(Before Shri S. V. Nevagi, Hon'ble Presiding Officer)

Ref. No. IT/13/83

Shri Pandurang B. Naik & 10 Others — Workmen

V/s

M/s. Goa Sintered Products Pvt. Ltd.— Employer

Workmen represented by Shri Subhas Naik.
Employer represented by Adv. B. G. Kamat.

Panaji, Dated: 5-5-90

AWARD

This is a reference made by the Government of Goa by its order No. 28/53-82-ILD dated 25th February, 1983 with an annexure scheduled thereto which reads as follows :

"Whether the action of the employer, M/s. Goa Sintered Products Private Limited, Mugalee, Curtorim, St. Jose de Areal, Salcete-Goa, in terminating the services of the following employees is legal and justified ?

Sl. No.	Names and Designation of the employees with the date of termination
1.	Shri Pandurang B. Naik, Operator-cum-Helper with effect from 8-10-1982.
2.	Shri Chandan Parodkar, Helper w.e.f. 18-10-82,
3.	Shri Prakash Bandekar, Helper w.e.f. 18-10-82,
4.	Shri Salu Fernandes, Helper w.e.f. 18-10-82,
5.	Shri Raju Shyam, Helper w.e.f. 18-10-82,
6.	Shri Raviraj Magala, Helper w.e.f. 18-10-82,
7.	Shri Mahadev Lukbhalkar, Helper w.e.f. 18-10-82,
8.	Shri Shantaram Govekar, Helper w.e.f. 18-10-82,
9.	Shri Francis Pereira, Helper w.e.f. 18-10-82,
10.	Shri Vijay Porob, Helper w.e.f. 18-10-82,
11.	Shri John Mascarenhas, Helper w.e.f. 18-10-82,

If not, to what relief the workmen are entitled to?

II. "Whether the demand of the workmen of M/s. Goa Sintered Products Private Limited, Mugalee, Curtorim, St. Jose de Areal, Salcete-Goa, for revision of rates of wages at the rate of a) Rs. 30/- per day for Operator-cum-Helper; b) Rs. 30/- per day for Turner Grinder; and c) Rs. 20/- per day for Helper & Lapper; is justified and if so, what wage rates should be fixed for the said categories and from which date it should be applicable ?"

The Union representing the eleven workmen of the company has raised the industrial dispute as regards the termination of their services which was by way of retrenchment. So the above reference was as regards the wrongful termination of the services and also for the fixation of the rates of wages of the operator-cum-helper and turner grinder. Now it has to be noted pertinently that out of the 11 workmen the workmen at Sr. No. 2 to 11 have acceded to the position that the termination of their services is by way of retrenchment and they all have accepted the compensation given to them as contemplated u/s 25F of I. D. A. So the dispute exists no more so far as the 10 workmen are concerned and the present dispute is confined to workman Sr. No. 1 who is the operator-cum-helper and who has joined the services on 8-2-1979 (according to management he joined on 8-2-80). However it is common ground that he was confirmed in service on 7-10-81.

As per the claim statement the workmen formed an union on 3-10-82 and the management which presented the formation of the union terminated the services of the unwanted workmen and the services of the present workman Pandurang B. Naik were terminated on 8-10-82. So far as this, a workman is concerned it is claimed that he was the Secretary of the union and was deliberately ear-marked for termination. According to the claim statement as this workman was the office bearer he has to be treated as protected workman under the I. D. Act. However, contrary to the legal provisions the management addressed a letter to this workman on 8-10-82 by predating it as 5-10-82 and terminated his services w.e.f. that day. According to the workman as per para 7 in the claim statement this is infact a dismissal made in bad faith, and without conducting any enquiry and with disregards of the principles of natural justice and this amounts to victimization. The workman therefore claims reinstatement and he took up the matter with the Labour Commissioner where the Conciliation proceedings were initiated. As the proceedings ended in failure the necessary report was made to the Govt. and the Government acting on the report made this reference to the Tribunal as required u/s

10 (1) (d) of the Act. The workman claims reinstatement into service together with back wages and all other benefits.

The management in its Written Statement dated 7-6-83 and filed in the Court on 13-6-83 took a preliminary objection that the Goa Trade Commercial Workers Union has no locus standi to sponsor the dispute on behalf of the workman. On merits it is submitted that the workman was not a permanent employee because he was appointed as a helper in unskilled category for a temporary period since 8-2-79 and was confirmed as Operator-cum-Helper on 7-8-81. About the formation of the union the company claims that it has no knowledge about the same and that the present workman was removed from service because the workman was responsible for a breakage in the production department of the company which is a sensitive department and any breakage of any simplest form of tools results in the minimum loss of Rs. 2500. According to them the workman was responsible for many breakages causing heavy losses to the company and memos were issued to the workman from time to time. So on the basis of the record/material available with the company the management lost confidence in the workman to work as operator-cum-helper in the production department, efficiently and he could not have worked without causing further loss to the company. So the company sought to terminate the service, under the contract or as per the relevant standing orders. This is how the management has justified its action in terminating the service of the workman. To this W. S. the workman filed the Rejoinder on 7-10-83 reiterating his stand that the termination is both unjust and illegal.

With the rival contention and the main contention about the right of union to sponsor the cause my Predecessor framed the following Issue as the Preliminary Issue :

PRELIMINARY ISSUE

(1) Whether the Union proves that it has been duly authorised by the workmen to sponsor their dispute so as to invest it with the status of an Industrial Dispute ?

This issue was heard on merits and my Predecessor by a well considered speaking order held on 16-11-84 that the Union had locus standi and the objection did not survive because in the earlier proceedings the employer had already recognised the union as the legitimate representative of the workers. With these findings my Predecessor adjourned the matter for hearing on merits on 8-2-85.

While framing the above preliminary issue by his order dated 12-3-83, my Predecessor had stated that this preliminary issue was being framed by him in addition to the issue involved in the first part of the Govt. reference namely the action of the management in terminating the services of the 11 workmen. So after the decision of the above preliminary issue by my Predecessor what remained for consideration was the legality or otherwise of the termination of the 11 workmen and my Predecessor had adjourned the matter from time to time to decide this issue. However my Predecessor retired and after I took over the matter is being adjourned before me from time to time for the hearing of this issue involved in the above Government reference.

As noted in the foregoing paragraphs the workmen Sr. Nos. 1 to 11 have conceded to the position as regards the termination of their services and they have walked away with whatever compensation by way of retrenchment they were offered by the management and now the industrial dispute subsists so far as the workman Pandurang Naik working as Operator cum helper is concerned. So two things will have to be considered by me in this matter of Government reference namely the legality or otherwise of the order of his termination w.e.f. 8-10-82 and if the order is a wrongful one the next question is what reliefs the workman Pandurang B. Naik is entitled to in the circumstances of the case. Before taking a brief resume of the oral evidence on record it would be necessary to consider the admitted points to curtail further discussion in the matter. The workman P. Naik hereinafter referred to as just the workman joined his services on 8-2-79 but on 8-2-80 according to the management. Apart from this contraversy it is a fact that he was removed from service w.e.f. 8-10-82 and it is necessary to study the circumstances under which he was terminated or retrenched to be stated correctly. The Union was formed on 3-10-82 and the union which sponsored the cause of the 11 workmen claims that the management had earmarked this workman for removing him from service for his union activities because he was elected as Secretary of the employees Union. There is a nexus between the two dates namely on 3-10-82 and the removal from services on 8-10-82 and placing reliance on these facts the union maintains that the workman is the victim of malicious action of the management because the workman has been un-ceremoniously removed from service. The management stated that it has no knowledge about the formation of the union and his removal from service has nothing to do with the activities in the union but they make out a positive case that the workman was removed from service because of loss of confidence in the workman. However, there is reason to believe that the management knew about the union activities because the management's witness Anil Lotlikar, Director of Party II/Company admits before me in his deposition recorded on 1-3-89 in para 2 that the management came to know that the workman had joined the union and they came to know this from the letter dated 4-10-82 and in the letter the names of the office bearers of the union were given and workman was shown as the Secretary. He also admits that there was no union in their establishment before that. So basically we start with the position that the workman who was elected as the Secretary of the Union was removed from service within a short period of the formation of the union and I have now to consider the consequences of the un-ceremonious removal from service.

It has to be noted that by the letter dated 5-10-82 the workman was removed from service w.e.f. 8-10-82

and no reasons whatsoever are given in the notice for his removal from service. With this position obtaining in the case the management has stated in para Nos. 10 and 11 of its W. S. that the management of the Company lost confidence in the workman to work as Operator cum helper in the Production Department efficiently and without causing any further loss to the Company. The Company therefore decided to terminate the services of the workman. As per the terms of the service contract or as per the provisions of relevant Standing Orders applicable to the factory. The order was issued on 5th October, 1982 which was served on the very day and what was offered along with this order was the final settlement of dues in connection of retrenchment compensation, notice pay, wages up to 7th October, 1982 and other dues. According to the management the workman refused to accept the cash payment tendered to him towards the final settlement and therefore the dues were remitted to him by a Money Order dated 6th Oct., 1982. According to the management this order is not a termination imposing punishment on the workman and this was just a termination simplicitor. So according to them there was no necessity of holding an enquiry into the conduct of the workman. So with these facts on record, we have to consider the position of the termination which is stated to be termination simplicitor and after considering the facts on record I shall study the legal position whether the action of the management amounts to termination simplicitor, whether the management had a right to remove a workman from service when admittedly he was confirmed in service on 7–10–81. So under the law governing the industrial dispute there is a procedure to be followed by the management before terminating the services of a confirmed workman or before resorting to the process of retrenchment as contemplated u/s 25F of the I.D.A. Before considering the legal aspect I shall take a brief resume of the oral evidence and I shall first study what the Director, Lotlikar has to say in his evidence in this regard and what admissions are made by the workman in his evidence recorded before my Predecessor and the evidence recorded before me. The Director Lotlikar states before my Predecessor on 16–12–85 that there were series of tools breakages in the Production Department to which the workman was attached as a Supervisor. He has also explained the process of the manufacture in the Sintered products and the machinery and tools and chemicals required in the manufacture. The work is done in shifts. There are then reports of different Supervisors in the period between 8th October, 1981 to 28–9–82 and the sum and substance of his evidence is that the Sr. Supervisors had reported against its workman and he gives the details at pages 2, 3 and 4 of his deposition. The explanation of the workman was also called for and according to him the total damage was to the tune of Rs. 50,000/– and the workman was in a way responsible for the colossal damage. According to him from the explanation given by the workman the furnace was fixed without completion of flushing operation due to which explosion had taken place and due to the explosion costly heating elements and internal bricks lining of the furnace was totally damaged. According to him the company incurred an expenditure of Rs. 40,000/– for the repair of the furnace. According to him there was the danger to the lives of the persons working in the factory on account of the explosion. He has been extensively cross examined on this point and on the point of the duties of Jr. Supervisor and Sr. Supervisor working in the Company. He is maintaining that the workman who was working as on the spot supervisor was responsible for the damages but it is suggested in the cross examination that the damages though caused were not due to the negligence of any particular person. In the cross examination conducted before me on 1–3–89 he states that after getting the report of the supervisor regarding the explosion in the furnace they called the report and explanation from the workman and after going through the record the management came to the conclusion that the workman was causing damages everywhere in the Production due to his inefficiency. It has to be noted that he now changes the story and states that the damage was not due to the "negligence" of the workman but due to the "inefficiency" of the workman and the blast caused damage to the furnace to the tune of Rs. 40,000. He also felt that due to the inefficiency of the workman there was danger to the co-workers because for running the furnace use of hydrogen gas which is a very active agent is needed So the management came to the conclusion that the services of the workman should be terminated to avoid any further loss to the company. According to him the services of the workman were terminated after the blast in the furnace in the factory and not after the formation of the union as is adumberated on behalf of the union. About the need to initiate a domestic enquiry by issuing a show cause notice to the workman he states that after going through the explanation of the workman it was evident that the workman was responsible for the blast and so there was no question of conducting any enquiry. The workman admitted before him in reply to the memo that he started the machine after the directions of the Supervisor but operated it without taking the precaution. With this it is suggested to him that the workman was not responsible for the blast in the furnace and he is unnecessarily being held responsible for the blast. About the breakage the company has produced the file regarding tool breakage record of the workman Pandurang Naik and the file is of different memos and reports from 8–10–81 to 28–9–82. It is needless to go through that record in detail and it would be just and proper to study what the workman has to say in this regard.

The workman is examined before me on 22–9–88 and he mainly speaks about the formation of the union and the circumstances under which he and others were removed from service, the facts I have already discussed in the foregoing paragraphs. I shall study what he has to say in cross examination in reply to the questions regarding the blast in the furnace. It is suggested to him that during the tenure of his service there used to be breakages of tools due to his negligence. His explanation is that there may be breakages occasionally during normal working conditions but admits that me-

mos were issued to him from time to time and he admits the issuance of the memos to him which are at Exb. E–5 to Exb. E–12. Exb. E–5 dated 27–8–81 is regarding the breakage of bottom punch of tool No. GSF–011, Exb. E–6 dated 2–3–82 is regarding the breakage of tool No. GSS. 017. Exb. E–7 dated 4–3–82 is regarding the explanation given by the workman wherein he states that while working on the press he had not fitted the nides and due to that the bush got bent and carod broke. Exb. E–8 is a memo dated 27–2–82 regarding the breakage of expensive tool i. e. Hub Bushes in Ameteep Press. Exb. E–9 is the explanation of the workman dated 4–3–82 wherein the workman states that the breakage was not purposely done and has assured that he would not do anything to cause breakage in future. Exb. E–10 is the Memo dated 7th June, 1982 regarding the breaking of one bolt while handling mixing machine and also interfering with mixing machine and breaking one bolt. Exb. E–11 is his explanation dated 9–6–82. He states that when he started checking the bolt was found to be broken. Lastly Exb. E–12 is the Memo dated 25–6–82. Exb. E–13 is the Memo dated 23rd Sept., 1982 wherein it is stated that the furnace was started without completing the flushing properly due to which there was explosion causing complete damage to costly he a ting element, incurring heavy financial loss to the company and bringing the life of the other workman working in the factory premises into danger. Exb. E–14 is the reply dated 25–9–82 wherein he states that he acted according to the directions of the Supervisor and he refers to the explosion of the furnace. Exb. E–15 is the report of the Supervisor, Production and Exb. E–16 (colly) are the explanations of the workman dated 4th October, 1982 and 29th Sept., 1982. According to the workman in his reply dated 4th October, 1982 the Supervisor did not tell him to start the flushing but he told him directly to start the furnace. He was also informed that after 15 minutes the cracker temperature would come down and he could start the furnace directly.

If a brief resume of the Memos and replies is taken, it would be apparent that there was a record so far as the working in the blast furnace was concern and the management was requiring the workman to give his explanation. Placing reliance on this record, Shri Kamat for the management submitted before me that the company came to a conclusion that the damages were caused due to the inefficiency and carelessness of the workman and on each occasion the company had to incur heavy monitory loss. So according to him the company found that the workman was unsuitable for the post of Operator cum Helper and so the services were terminated and in the given circumstances this is a discharge simplicitor and at the most this may be taken as a retrenchment as contemplated u/s 25F of the Act and he relies on two three rulings of the Bombay High Court and on factual aspects he states that at the time of termination on 6–10–82 the workman was offered entire compensation but the workman refused to accept the same and so the amount was sent to him by Money Order. So according to him the termination was not for any misconduct but the management felt that the workman was unsuitable to hold the post of Operator cum Helper and it is a termination simplicitor on account of inefficiency. While contraverting this position Shri Naik for the workman stated that the blast in the furnace had taken place on 23–9–82 and the blast furnace was put into operation after it was repaired and the proper safety devices were not followed and even though the blast had taken place the workmen alone were not responsible for the blast in the furnace. These are the rival contentions and submissions on the point of blast in the furnace and now I shall study the legal opinion on this point. The first authority is of a single judge of the Bombay High Court, Nagpur bench reported in 1988 LAB. I. C. page 1396. The case was relating to a driver of Maharashtra State Road Transport Corporation and following the Employees Service Regulations and regulation 61 in particular the management had terminated the services of the driver on the ground of loss of confidence. According to the management this action was not by way of punishment or misconduct. His lordship while considering the facts came to a conclusion that the action of the management fell within the meaning of word 'retrenchment' and as the provisions of Sec. 25F were not complied with the order was held to be illegal and the employees were directed to be reinstated into services. This ruling is relied upon on behalf of the workman. There are then other two authorities of the Bombay High Court. J. P. B. Sawant (now judge of the Supreme Court) reported in 1981 (42) FLR page 185. The facts in that case are also similar to the facts of the present case. The workman was employed as a typist in the administration office of one of the two branches of a Private Limited Company. Due to the shortage of raw material and fall in orders for goods the management thought of closing one of its two units and consequently resorted to the retrenchment of staff in the administration office where there were four typists. It decided to retrench two jr. most typists and the applicant was one M. M. Kendrekar who was one of the two jr. most typists. He was served with a notice on 31–12–71 and his services were terminated by way of retrenchment w.e.f. 1–1–72. By the same notice he was asked to collect all his dues. The workman did not collect the dues although the payment was ready with the cashier and what the workman had to do was just to approach the cashier for collecting his dues. His Lordship with these facts felt that there was no substance in the contention of the workman that he was not offered his dues at the time of the service of the notice of retrenchment on him. With these facts the Labour Court before whom the matter came up held that the order of retrenchment was not done with due compliance with the legal provisions and there was breach of the provisions and directed his reinstatement. When this order was challenged before his lordship in writ petition under Sec. 226 of the Constitution his Lordship felt that on the basis of the evidence on record the company had rightly retrenched the workman since they found him to be surplus and there was also no breach of any provision of law while retrenching the workman. However, even when his lordship had set aside the order of workman's reinstatement into ser-

vices his lordship had directed the Petitioner Company to make the ex-gratia payment to the workmen over and above that is due to the workman. The above is the ratio of the two Bombay High Court judgments which are cited before me and I shall now advert to the Division Bench judgments of the Bombay High Court presided over by Chief Justice reported in 1981 II LLJ page 459. It was the famous case of the Aircraft Makalu which was specially serviced for the flight of V. V. I. P. persons, the then Prime Minister of India, Mrs. Indira Gandhi and the charge of negligence was placed on the two high ranking officers of the Air India Corporation one was the Dy. Director of Engineering Maintenance and the other was the head of the Maintenance Division of the Air India Corporation, in exercise of powers under Regulation 48 of the Air India Employees' Service Regulations, had terminated two high ranking officers. The termination of service was challenged by the two officers on very many grounds. The management in reply maintained that following the Regulations 42 to 44 and 48 of the Air India Employees' Service Regulations, the management resorted to termination simplicitor without resorting to the procedure for holding departmental enquiry. Considering these facts the Div. Bench held that the petitioner employees had no right to hold the post of security officers and in absence of abuse of power holding of enquiry was not a must and the question of colourable exercise of powers did not arise. So in the above case the Division Bench of the Bombay High Court presided over by the Chief Justice felt that the Court has to see whether there is material available on record to reach a conclusion that the employee was negligent in the matter and whether the employer was justified in stating that there was a loss of confidence due to the conduct of the employee. In that case too as well as in the earlier case decided by his lordship Sawant J. there was no domestic enquiry conducted about the negligence but general enquiry was held and their lordships concluded that the fact that the workman was negligent was sufficient enough to hold that the case of loss of confidence was justified.

In the instant case, the workman who joined as helper in Feb., 1979 was confirmed as Operator cum Helper and he was working under the supervisor in the Furnace Department. In his evidence before me on 22-9-88 he states in examination in chief only that in Sept., 1982 there was an explosion in the furnace department and a memo was issued to him and his explanation was called for regarding the circumstances under which the explosion took place. The notice Exb. 13 was issued to him during the course of the preliminary enquiry in the blast of furnace. His reply is Exb. 14 and the management wrote back to him by letter Exb. 15 stating that his explanation was not acceptable to the management and thereafter the notice of termination was issued to him terminating his services w.e.f. 8-10-1982. So all these facts do go to show that there was an explosion in the blast furnace for which the workman was held responsible and I have discussed all those facts in details in the foregoing paras. The Director of the Company Govind Lotlikar states that the furnace department has tools which are precision instruments and any tool damaged or broken would incur a loss of Rs. 2500/- even for a simpliest type of tool. About the furnace blast he states that the damage was to the tune of Rs. 60,000/- and the workman was held responsible for the damages. It is true that no charge sheet was issued to the workman but preliminary enquiry was held and I am considering this position to see whether the workman is victimised on account of union activities. I do not find so and considering the above Bombay authorities, I feel that the termination of the workman which amounts to retrenchment is justified in the given circumstances. Following the observations of Justice Sawant, I feel that the termination should be held to be proper but at the same time ex-gratia compensation should be allowed to the workman. In the case of Chandulal v/s Pan American Airways reported in 1985 Supreme Court Cases (LLS) page 535 the Supreme Court did hold that before dismissal holding of domestic enquiry was a condition precedent but the Supreme Court granted the relief of compensation considering that the workman had put up a service of 11 years. In another case reported in 1975 Supreme Court Cases (LLS) page 169 the Supreme Court have held that the Court while considering discharge simplicitor has to see whether infact the discharge of the employee is a bonafide one or the colourable exercise of power to discharge and the Supreme Court have further observed that the Court have powers to go behind the order to determine its real nature. While considering the above observations, I feel that the order of discharge is passed after a preliminary enquiry in to the furnace blast and the workman was in a way responsible for the blast. Considering all the above aspects, I feel that the order of discharge should be held to be just and proper, but at the same time ex-gratia compensation should be awarded to the workman. The order Exb. E-2 dated 8-2-80 shows that the workman was appointed for a period of 6 months on consolidated daily wages of Rs. 6/- which means his monthly wages were Rs. 180/- p. m. Considering this and the fact that the workman had hardly put up a service of 2 years and a few months before his retrenchment, I feel that the award of Rs. 1000/- as retrenchment compensation and Rs. 10,000/- as ex-gratia compensation would best serve the prupose and proper justice would be done to the workman. In the result I pass the following order :

ORDER

The termination of the services of the workmen serial No. 2 to 11 in the Government reference is held to be just and proper as they have already accepted compensation and have acquiesed in the fact of termination. About the workman serial No. 1, Pandurang B. Naik, Operator cum Helper, the termination of his service w.e.f. 8-10-82 is held to be just and proper in the given circumstances. However he is awarded ex-gratia compensation of Rs. 10,000/- and additionally retrenchment compensation of Rs. 1000/- and the management of M/s. Goa Sintered Products, Pvt. Ltd., Muglee, Curtorim, St. Jose de Areal, Salcete Goa, do pay the compensation of Rs. 11,000/- (Rupees eleven thousand only) to the workman immediately.

About the part No. 2 of the Govt. reference, no submissions are made before me and I hold that the action of the management in refusing the demand of the workmen for revision of rates of wages is justified in the circumstances of the case.

There shall be no order as to costs. Inform the Government accordingly about the passing of the award.

S. V. Nevagi
Presiding Officer
Industrial Tribunal.

Order

No. 28/11/88-LAB

The following Award given by the Industrial Tribunal, Goa, Daman and Diu is hereby published as required under the provisions of Section 17 of the Industrial Dispute Act, 1947 (Central Act XIV of 1947).

By order and in the name of the Governor of Goa.

Subhash V. Elekar, Under Secretary (Labour).

Panaji, 9th February, 1990.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri S. V. Nevagi, Hon'ble Presiding Officer)

Ref. No. IT/18/88

Workmen — Party I/Workmen

V/s

M/s. United Services,
Contractor, M/s. Zuari Agro
Chemicals Ltd. — Party II/Employer

Workmen represented by Shri Subhas Naik.

Employer represented by Shri P. K. Lele.

Panaji, Dated : 19-1-90.

AWARD

This is a reference made by the Government of Goa, by its order No. 28/11/88-ILD dated April, 1988, with an annexure scheduled thereto which reads as follows :

"Whether the action of the management of M/s. United Services, contractor, to M/s. Zuari Agro Chemicals Limited, Sancoale, Zuarinagar, in discontinuing 'Bakshish' from the year 1986-87 is justified ?

If not, what relief the workmen are entitled to ?

Ref. No. IT/19/88

Workmen — Party I/Workmen

V/s

M/s. New Era Handling Agency,
Contractor to M/s. Zuari Agro
Chemicals Ltd. — Party II/Employer

AWARD

This is a reference made by the Government of Goa by its order No. 28/12/88-ILD dated April 20, 1988 with an annexure scheduled thereto which reads as follows :

"Whether the action of the management of M/s. New Era Handling Agency, contractors to M/s. Zuari Agro Chemicals Limited, Zuarinagar, Sancoale, Goa, bagging and despatch section, in discontinuing 'Bakshish' from the year 1986-87 is justified ?

If not, what relief the workmen are entitled to ?

If so, what is the mode of recovery of the advance paid for the year 1986-87 ?

As seen from the above Government reference this is a joint reference made by the parties to the Tribunal as contemplated under sub-section (2) of Sec. 10 of the I. D. A. Along with this dispute between the workmen represented by the union of the United Services a contractor of Z. A. C. L., another dispute is raised by the same union on behalf of the workmen of another contractor of ZACL by name M/s. New Era Handling Agency which is registered at IT/19/88. Both these references are being heard together as companion proceedings. Evidence is recorded in both the proceedings side by side and submissions are also made in both the references together requiring the tribunal to record a finding on the main issue whether the workmen can claim the payment of 'Bakshish', commonly known as 'Ex-gratia' payment as of right, whether the contractors are bound to pay or continue to pay the bakshish if the bakshish was being paid in the past and whether the management of the contracting firm was justified in discontinuing the system of paying bakshish to its workmen from the year 1986-87 in the matter of United Services and stopping the payment of bakshish also from the year 1986-87 to a section of workmen namely workmen of Bagging & Despatch Section by the management of New Era Handling Agency another contractor. So the points involved in both the matters are almost the same but in the matter of M/s. New Era Handling Agency, only a section of the workmen aer involved while in the matter of United Services the entire work force of the contractor is involved and the crucial point is obviously whether payment of ex-gratia can be claimed by the workmen as of right and conversed whether the management of the two contracting firms can be forced to continue paying bakshish from the year 1986-87, the year in which the payment was stopped. To put the facts in other words the question posed for consideration is whether this Tribunal can come to a conclusion that the action of the management in discontinuing the payment of ex-gratia is just or otherwise. It has to be noted here pertinently that in both the Govt. references which are u/s 10 (2) of the Act they have called upon the Tribunal to consider the aspect whether the discontinuance of payment of bakshish is justified or not and the question of the legality of the discontinuation is left wide open. So while considering both these Govt. references the Tribunal has mainly to confine itself to the justifiability aspect of the action of the management and all evidence recorded before me has to be traversed to understand the case of the management of the two contracting firms and at the end this Tribunal has to endeavour to find out whether the action of the management of both the contracting firms is justified in the given circumstances. With this basic aspect for consideration before me, I shall first traverse through the evidence led on behalf of both the contracting firms and then I shall go through the evidence led by the union on behalf of the workmen. Obviously the workmen did not possess such records regarding the payments of the past. But the management of both the contracting firms is in possession of some records of the past. A salient feature of both these contracting firms is that they are the contractors to the principal company namely Zuari Agro Chemicals Limited situated at Sancoale, Zuarinagar, commonly known as ZACL and this ZACL is a

very big multi-national company dealing in manufacture of fertilizers potash etc. The two contracting firms are engaged in the process of transporting bags of manufactured goods such as fertilizers etc., and the contract is exclusively alloted to such contracting firms and the contracting firms are changing from time to time.

It has also to be noted pertinently that the contracting firms may change from year to year or after a span of some years while the workmen engaged in the contract work are almost the same with a difference of few workers coming in or going out. The Unions are also the same and so the contractors handling the goods of the principal manufacturer ZACL prepare their bills on the basis of their expenditure over the payment of wages, bonus etc., and many times the payment of ex-gratia was also added to the claim made with the principal employer namely ZACL who used to make the payments to the contractors accordingly and in turn the contractors were disbursing the amounts of wages, bonus etc., to their workmen and this system was obtaining for many years in the past. Whenever there were settlements between the management of the contracting firms and the union for revision of pay scale or payment of bonus etc., the contracting firm used to appraise the principal of the addition in the wages etc., and the contracting firm used to claim additional money from the principal. This was pertaining to the revision of wages, bonus etc., and the question to be considered would be whether the payment of ex-gratia i. e. Bakshish also should be added to this category and for this purpose submissions are being heard by both the parties. Incidently, I shall study the evidence of both the contracting firms to understand their system of work, their liability to the workmen represented by the union and their liability to make the payments to the workmen in the changed circumstances.

I shall first study the evidence of the management's witness Shri Sanjay Kulshreshtha, the Managing Partner of M/s. United Services who is examined at Exb. 17. This contracting firm M/s. United Services which is a partnership firm has taken two contracts from ZACL namely 'Potash Feeding and NPK House Keeping' the workmen of NPK house keeping have not raised any dispute as regards payment of ex-gratia and only the workmen of Potash feeding have raised the dispute regarding the payment of ex-gratia. According to the Managing Partner his firm took over the contract of Potash feeding on 1-8-87. Before that Brieflex Engineering Works was the contractor. This Brieflex Engg. Works had a system of paying bakshish to their workmen. So in August, 1987 when they took over the contract the bakshish for the previous year had remained to be paid to the workmen of Potash feeding unit in the year 1987. So after they took over the contract on 1-8-87 ZACL asked them to distribute the previous year's amount of bakshish to their workmen. They did so accordingly. That bakshish paid by them was for the period from April '86 to October '86. With this position obtaining in the case they stopped paying bakshish from November, 1986. This action was taken by them because their predecessor had entered into a settlement with the union in Nov., '86 vide Exb. 15 (W) and under the settlement a scheme of incentive linked with production was introduced, probably for the first time. According to the Managing Partner this scheme was introduced in lieu of the scheme of bakshish. According to him since Nov., '86 they have been paying incentive to their workmen and consequently the question of paying bakshish also did not arise and this is how he was tried to justify his action in stopping the payment of bakshish. In cross examination he admits that their contract of Potash feeding started on 1-8-87 but before that their contract of NPK house keeping had already started in 1982. About the NPK house keeping he admits that they paid bakshish to the workmen in 1983 for the year 1982 but no bakshish was paid for the year 1983 payable in 1984 but from 1984 they continued paying bakshish till 1987. According to him the system of bakshish to NPK house keeping cannot be linked with production because the job of the workmen of that section was involved with cleaning the house and not with production. In other words he means to say that workmen of NPK House Keeping cannot have the benefit of incentive linked with production because they are concerned with just cleaning only. After taking this information about the NPK house keeping he was asked whether his predecessor was paying bakshish to the workmen of Potash Feeding Section from 1982 till they took over on 1-8-87. He admits that the settlement Exb. 15 (W) which introduced the incentive linked with production scheme did not specifically mention that the scheme of bakshish was withdrawn. This is the evidence of the management of the contractor United Services.

As far as the contractor of New Era Handling Agency is concerned their Managing Partner Atul Jadhav whose evidence is recorded at Exb. 25 says that their partnership accepted the contract of ZACL in April '78 and their job is that of bagging and despatching fertilizers. The number of workers then was around 510 and the number which is verying has now gone up to 600 till 30-9-86. They had a first settlement with the union in 1978, second settlement in 1982 and the third settlement was as regards charter of demands was on 3-9-86. In 1986 their workmen had two unions and the settlement dated 3-9-86 was made with both the unions namely Goa Trade & Commercial Workers' Union and the National Commercial & General Employees' Sangh. In this case both the unions has jointly raised the dispute and the dispute is referred to the Tribunal on behalf of the two unions and the management as required u/s 10 (2) of the Act. This is an admitted fact. About the system of bakshish he says that for the year 1982-83 they paid bakshish in 1983, mainly because the production of fertilizers of the company was then very good. At that time ZACL had paid ex-gratia to their workmen and so the two unions also demanded bakshish and the bakshish for 1982-83 was paid in 1983. Then one of the union had written to him on 23-4-83 vide Exb. 16 (E) stating that the principal employer had paid ex-gratia i. e. bakshish to their employees and so they also should pay. So the decision to pay bakshish was taken and as per letter Exb. 18 (E) they offered to pay and distributed Rs. 1,70,000 amongst the workers. In 1983-84 no bakshish was paid because the production was not good and the principal company had also not paid any bakshish to its employees. The unions also had not demanded bakshish that year. However, in 1984-85 they paid bakshish to the workmen. Similarly they paid bakshish to the workmen for 1985-86 also. At that time the union demanded the bakshish by letter Exb. 19 (E). The union had mentioned that ZACL was paying production incentive bonus i. e. bakshish to their workmen and so his management should also pay production incentive bonus for his workmen for 1985-86. So they paid bakshish to the workmen for 85-86 which was production incentive bonus. So as per his say during their working span of 4 years from 1982-83 they paid bakshish for 3 years with a gap of one year. He then refers to the year 1986-87. In that year both the unions demanded bakshish and his management did not accept the demand for bakshish and a letter was written to the union on 11-6-87 vide Exb. 26 (E). Coincidently in the year 1986-87 their principal ZACL had introduced incentive scheme and the workers of ZACL had accepted the payment under that scheme. So the management of this contractor wrote to the workers

to accept the incentive scheme as per settlements. So as per the settlement for 86–87 the incentive scheme is still in operation and workers are receiving incentive money for years subsequent to 1986–87. As per the incentive scheme each workman gets minimum Rs. 75/- p. m. as fall back incentive which is a fixed figure and additionally the workers get more incentive ranging from Rs. 250/- p. m. depending upon the additional work put up by them as per the work and category. According to him this incentive scheme is introduced under settlement with both the unions. In May 1987 there was further improvement in the incentive scheme and the workers are getting additional incentive under that scheme. Similarly under 1986 settlement the charter of demands were also considered and there was total increase in the pay packets of the workmen. According to him at the time of settlement the workers were averagely getting Rs. 600/- p. m. but under the settlement there was a rise of Rs. 550/- p. m. in their pay packet and consequently on an average there was 90 percent increase in their pay packet. According to him the management considered all these aspects and the management declined the claim for bakshish for the year 1986–87. According to him in addition to the above payments they have been paying bonus of 20 percent to the workmen. Consequently they refused to pay bakshish and there was agitation by the workmen and before the Labour Commissioner in Jan., '88 there was a settlement and it was agreed upon between them to jointly make a reference to the tribunal as contemplated u/s 10 (2) of the Act. The last statement made by him in his examination in chief is that the term of their settlement with the union dated 31–3–89 has now expired and they have received a fresh chaster of demands and negotiations on them are going on. In his cross examination it is generally suggested to him that the service conditions of workmen of ZACL are better and superior to the service conditions of his workmen. About the settlement by ZACL's management with the union he says that the ZACL introduced the incentive scheme and bakshish scheme was set aside. He does not know whether the ZACL has withdrawn the bakshish scheme as per the settlement. So far as his knowledge goes he knows that ZACL have introduced the incentive scheme as per the settlement and since then they are not paying any bakshish to their workmen. This is the sum and substance of his statement in the cross examination. Now with the evidence of the two management's witnesses certain facts emerge for consideration. These facts are self eloquent. The settlement which took place with the union does not specifically make a mention of the scheme of paying bakshish and whether this scheme of paying bakshish automatically stood abolished after the introduction of the payment of incentive scheme linked with production? There is admittedly an increase in the pay packet of the workmen in addition to the statutory bonus at 20 percent. So the question is whether the incentive scheme linked with production is an independent scheme, whether this scheme runs parallel to the scheme for paying bakshish and whether upon the introduction of the scheme of incentive linked with production the scheme for payment of bakshish automatically comes to an end? The management of the contracting firms is bound to pay the legal dues to the workmen and such legal dues are the wages as per the letters of appointment, the increase in the wages as per the settlements with the union and the payment of bonus as per the Bonus Act. All these payments are the legal dues to the workmen and the management is bound to pay these dues to the workmen and we call this as the legal obligation on the part of the management to pay to their workmen to keep the workmen satisfied and without leading to any industrial unrest. This is one aspect of the case. The second aspect is regarding the introduction of the incentive scheme linked with production and the evidence of the witness Sanjay Kulshreshtha clearly goes to show that after the introduction of the incentive linked with production scheme the take home pay-packet of the workmen had increased and so the management had simultaneously stopped paying bakshish from November, 1986. The witness when questioned in cross examination does state that the settlement Exb. 15 (W) does not specifically mention that the scheme of bakshish was withdrawn. This no doubt is true and the settlement does not specifically say so. However, the question is whether the settlement ought to have made a mention of the bakshish scheme, if the management was to be constrained to be bound by the bakshish scheme under the settlement. The non-mention of the bakshish scheme and its implications will have to be considered in the context of the attitude of the management to see whether the action of the management in refusing to continue paying bakshish from 1986–87 onwards is just and proper in the circumstances of the case. As already mentioned the legal obligation is quite different from the other obligations which are not legally binding but have to be taken into consideration whether it would be just and proper for the management to make certain payments in order to avoid industrial unrest or in other words to maintain industrial peace in their organisation. Whenever there is a breach of a legal binding or obligation there is bound to be industrial unrest and the management will have to take cognizance of such industrial unrest to keep and maintain industrial peace in their working place. However, the question is whether the action of the management can be simply said to be unjust simply because they discontinued a scheme which they do not find to be necessary and in discontinuation of which they were under no obligation either contractual or under the settlement. It is a common ground that there is no contract nor a settlement in this regard and now this Tribunal is called upon to find out whether the action of the management in refusing to pay the bakshish from 1986–87 onwards is just and proper in the circumstances of the case and I shall have to study the dictionary meaning of the words 'just and legal' to say how things stand in the matter.

As per the Oxford dictionary 'just' means equitable, fair, well-grounded right in amount etc. The common meaning is the word just if construed along with conduct meaning just conduct the court has to see whether the action of the management is fair and well grounded. About the term 'legal' the meaning is based on law falling within the province of law to achieve useful purpose etc., in legal matters that is legal proceedings. The second meaning required or appointed by law. The Government reference which is a joint reference under 10 (2) of the Act does not call upon this Tribunal to find out whether the action of the management in discontinuing bakshish is not legal but what this Tribunal has to find out is whether the action is not just. I shall consider different aspects from this angle.

Shri Subhas Naik for the workmen did submit before me that the bakshish was being paid by the company besides bonus or incentive linked bonus. According to him due to the stoppage of bakshish in 1986–87 there was industrial unrest and before the Labour Commissioner the company decided to pay advance for that year in order to buy peace. Thereafter this joint reference came to be made and when the bakshish for next year became due and interim relief application was moved and it was decided to approach the Tribunal to get the decision in the matter as expeditiously as possible. He then refers to the settlement signed on 30th Sept., 1986 vide Exb. 27 (W) whereunder revised incentive scheme was introduced. At the time of settlement there was no discussion on bakshish. According to

him the settlement does not specifically says that the system of bakshish was withdrawn. Thus, the emphasis on behalf of the union is on the point that as the bakshish is not specifically withdrawn nor discussed at the time of the settlement its stoppage would now lead to industrial unrest. While relying on an authority of the Supreme Court reported in AIR 1960 S. C. page 585 he claims that upon its introduction once it cannot be abolished. He also relied on another Supreme Court case reported in 1976 Supreme Court Cases, L & S page 517, he says that the Payment of Bonus Act, 1965 deals with bonus only that is statutory bonus. According to him as per the Supreme Court's opinion bonus not linked with profit and not governed by the statute is also payable by the company. Lastly as a forewarning to the management he claimed that the discontinuation of bakshish is unjust because it would create industrial unrest and the workers who are receiving it continuously for many years in the past would not accept the position that the bakshish is discontinued in the middle and this would lead to industrial unrest. Here we are considering the point whether the action of the management in discontinuing bakshish is just and proper. If the management is fully aware of the repercussions of its decision to discontinue the bakshish the management can very well consider the position and may see whether its action is just and what they should do to avoid the possible industrial unrest. However, from the trend of the arguments made by Shri Lele on behalf of the management I find that the management is fully concious of all these eventualities and the management is sticking to its guns in discontinuing the system of bakshish once for all.

Shri Lele for the management while countering the claim of the union did submit before me that the system of paying bakshish was introduced in 1982-83 and the bakshish was paid for 4 years till 1986-87 with a gap of one year. According to him by virtue of the settlement of 1986 there was a substantial rise in the pay-packet of the workmen and management's witnesses say that the rise in pay-packet have gone up to the extent of 90%. He further claim that after the introduction of the scheme of incentive linked with production the incentive is being paid to the workmen from month to month. According to him as a matter of fact this incentive scheme was introduced in 1982 itself but it was not acceptable to a majority of workers and only a minescule of loaders had accepted it. While clarifying the position he stated that all the workers are benefitted by the month wise payment of incentive and there are categories of workers such as cleaning house workers who do not get incentive because their work has no scope for increase in production because theirs is the work of cleaning house. Hence for the benefit of such workers in the cleaning house the system of bakshish is continued even after 1986-87. Further he made out a point that the company did not pay bakshish every year soumotu, but it did pay when the demand for bakshish was made by the union and for this he relies on Exb. 16 (E) and Exb. 19 (E). He further says that as admitted by union-witness Seby the union made demands for bakshish whenever ZACL paid bakshish to its employees. So when the principal employer paid bakshish the employees of the contractors demanded bakshish. While analysing this position he stated that the principal employer ZACL had an agreement with their workmen in 1986 and as per the agreement ZACL introduced the scheme of production linked incentive for their workers and by virtue of this the ZACL stopped the payment of bakshish. According to him there is no specific clause in the agreement of the ZACL with the union but by implication it means that the system of bakshish was stopped after the introduction of production linked incentive scheme. On this anology also he justifies the action of the two managements in stopping the bakshish. He further reiterated that this bakshish is no way linked with the festival and by coincidence the bakshish was paid in July and Shri Ganesh Festival comes in August or September and this is not a bakshish commonly known as pooja bakshish. He further claimed that in the span of four years no bakshish was paid in 1983-84 and so there is no continuity clause. He also stated that in 1983-84 the union had not made demand for bakshish. So relying on an authority of Supreme Court he states that for any amount to become term of condition of employment as per the following criteria.

1. Payment is made over un-broken series of years.
2. That it has been paid for sufficiently long periods.
3. Payment is made at uniform rates.

According to him in the instant case bakshish is paid for 3 years in a span of 4 years. As per the principles laid down by the Supreme Court customary or pooja bonus becomes payable only if the above conditions are applicable.

The cases relied upon by him are:

1. Upendra Chandra Chakraborty V. United Bank of India reported in 1985 II L.L.J. page 398.
2. Churakulam Tea Estate (p) Ltd. v. Workmen reported in 1969 Lab. I. C. 1996.
3. Vegetable Products Ltd. v. Workmen reported in 1959-67 S.C.L.J. Vol. (i) 449.
4. Grahams Trading Co. (India) Ltd. v. Workmen reported in 1950-67 S.C.L.J. Vol. (2) 776.
5. Isphani Limited v. Ispani Employees Union reported in 1950-67, S.C.L.J. Vol. (2) 770.

So, the sum and substance of the arguments made by Shri Lele on behalf of the two managements is that since the introduction of production linked incentive scheme there is a substantial rise in the pay-packet of the workmen and the total carry home pay has gone up considerably and for this reason the management thought of withdrawing the system of bakshish. While giving the figures he states that since the introduction of the incentive scheme the workmen started getting not less than Rs. 250/- p. m. as incentive. Comparatively the bakshish which was being paid by the management before 1986-87 worked out to around Rs. 600/- p. a. i. e. Rs. 50/- p. m. He says that on this count also the action of the management is justified. He further reiterated that there is no infringement of any service condition or of any law made by the management. He further invited my attention to the position that the last settlement took place in 1987 and now a fresh settlement is due and the union has already submitted the charter of demands and the discussions are due to take place soon.

While countering the claim of the management Shri Subhas Naik for the unions did submit before me that the rise in pay-packet is no ground for dis-continuation in bakshish. About the withdrawal of the bakshish scheme by the principal namely ZACL, he points out that the union and the management of ZACL had agreed for the withdrawal of the bakshish scheme. According to him, here there is no agreement for such withdrawal. I feel that this agreement stands on a brittle ground. If the union did want to have a specific reference to the bakshish scheme the same would have found a place in the settlement of 1987. So the non-mention of the bakshish scheme-withdrawal in the settlement can be interpreted in both ways. The management has come forward with a positive case that

they have withdrawn the bakshish scheme in view of the introduction of the production linked incentive scheme and this scheme as seen a rise of more than Rs. 250/- p. m. in the total carry home packet of each workman and according to the management the stoppage of less than Rs. 50/- p. m. would have hardly any impact on the working of the two contracting works and they have justified their action in withdrawing the bakshish scheme. Upon an overall consideration of the facts and circumstances as stated in the foregoing paragraphs I did not come across any fact or circumstance showing how the action of the management in withdrawing the bakshish scheme is not just or proper. After all in the two Government references what the tribunal is called upon to find out is whether the managements acted in the two matters in an unjust manner and there are no circumstances showing that their action was unjust or improper. It is undoubtedly true that the management with a view to buy peace and to avoid industrial unrest agreed for the interim relief before the Labour Commissioner. The management has considered all facts and circumstances and have taken a rigid stand to not to continue with the bakshish scheme. Anyway, the point is bound to come for discussion at the time of the impending settlement the day for which is not far off. While considering the principles laid down by the Supreme Court, what this Tribunal has to find out is whether the payment of the type of bakshish which is in the nature of an incidental bonus is being made for an unbroken series of years and whether it was being paid for sufficiently long time. I find that this is not a pooja bonus, a terminology which is being used in the parlance of big industrial houses and I find that the payment of bakshish is not a service condition of the workmen and its stoppage would not mean the legal breach of any service condition and the action of the two managements seems to be just and proper in the circumstances of the case. I am therefore inclined to hold that the action of the managements is just in the given circumstances and this Tribunal has to record a finding on this point only and this is with reference to Ref. No. IT/18/88. This is also true as regards companion ref. No. IT/19/88. In IT/19/88, I shall similarly record a finding about the discontinuance of bakshish from 1986-87 onwards. In that reference there is an additional clause and the Tribunal is called upon to suggest the mode of recovery of the advance paid for the year 1986-87 in the event of the action of the management in discontinuing the scheme from 1986-87 onwards being held justified. In this regard the Tribunal is not able to suggest any mode of recovery of the advance paid for the year 1986-87. It is totally within the discretion of the management of M/s. New Era Handling Agency to waive the recovery or to work out a scheme for recovery of the advance. This Tribunal is unable to give any guidelines for the recovery of the advance by way of instalments. With these observations, I pass the following awards in the two companion matters :

Ref. No. IT/18/88

AWARD

It is hereby held that the action of the management of M/s. United Services, Contractors, to M/s. Zuari Agro Chemicals Limited, Sancoale, Zuarinagar, in discontinuing bakshish from the year 1986-87 is just and proper in the circumstances of the case. Consequently, the workmen are not entitled to any relief in this Government reference.

The parties do bear their own costs.

Inform the Government accordingly about the passing of the award.

Ref. No. IT/19/88

AWARD

It is hereby held that the action of the management of M/s. New Era Handling Agency, Contractors to M/s. Zuari Agro Chemicals Limited, Zuarinagar, Sancoale, Goa - Bagging and Despatch Section in discontinuing bakshish from the year 1986-87 is just and proper in the circumstances of the case.

About the mode of recovery of the advance paid for the year 1986-87, the Tribunal is unable to give suggestions such as recovery by instalments as it is within the discretion of the management either to waive the dues or to adopt a scheme for recovery from the payments of individual workmen in future.

So far as this reference is concerned the workmen are not entitled to any reliefs.

The parties do bear their own costs. Inform the Govt. accordingly about the passing of the award.

S. V. Nevagi
Presiding Officer
Industrial Tribunal.

Order

No. 28/2/88/-LAB

The following Award given by the Industrial Tribunal, Goa, Daman and Diu is hereby published as required under the provisions of Section 17 of the Industrial Dispute Act, 1947 (Central Act XIV of 1947).

By order and in the name of the Governor of Goa.

L. J. Menezes Pais, Under Secretary (Labour).

Panaji, 23rd July, 1990.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri S.V. Nevagi, Hon'ble Presiding Officer)

Ref. No. IT/1/82

Shri Naguesh V. Mapseker — Workman
V/s
M/s Sociedade de Fomento Industrial Pvt. Ltd. — Employer

Ref. No. IT/7/82

Shri Tukaram R. Prabhu — Workman
V/s
M/s Sociedade de Femento Industrial Pvt. Ltd. — Employer

Ref. No. IT/8/82

Shri Prabhakar K. Kamat — Workman
V/s
M/s Sociedade de Fomento Industrial Pvt. Ltd. — Employer

Ref. No. IT/9/82

Shri Allen Fonseca — Workman
V/s
M/s Sociedade de Fomento Industrial Pvt. Ltd. — Employer

Workmen represented by Shri K. V. Nadkarni.

Employer represented by Shri B. G. Kamat, Advocate.

Panaji, Dated: 29.6.90.

AWARD

This is a reference made by the Govt. of Goa, by its order No. 28/6/81-ILD dated 29.1.1982 with an annexure scheduled thereto which reads as follows:

"Whether the action of the employer of M/s Sociedade de Fomento Industrial Pvt. Ltd., Margao, Goa, in terminating the services of the workman Shri Naguesh V. Mapsekar with effect from 26.5.1980 is legal and justified"? If not, to what relief the said workman is entitled to ?

Ref. No. IT/7/82

This is a reference made by the Govt. of Goa, by its order No. 28-12/81/-ILD dated 1st February, 1982 with an annexure scheduled thereto which reads as follows :

" Whether the action of the employer of M/s Sociedade de Fomento Industrial Pvt. Ltd., Margao, Salcete-Goa, in terminating the services of Shri Tukaram R. Prabhu, Aquem, Alto, Margao-Salcete-Goa, with effect from 26.5.1980 is legal and justified"?

If not, to what relief the said workman is entitled to ?

Ref. No. IT/8/82

This is a reference made by the Govt. of Goa, by its order No. 28/11/81-ILD dated 1st February, 1982 with an annexure scheduled thereto which reads as follows :

"Whether the action of the employer of M/s Sociedade de Fomento Industrial Pvt. Ltd., Margao, Goa, in terminating the services of Shri Prabhakar K. Kamat, Pansulem, Canacona, Goa with effect from 26.5.1980 is legal and justified ?

If not to what relief the said workman is entitled to ? "

Ref. No. IT/9/82

This is a reference made by the Govt. of Goa, by its order No. 28/10/81-ILD dated 30th January, 1982 with an annexure scheduled thereto which reads as follows:

"Whether the action of the employer of M/s Sociedade de Fomento Industrial Pvt. Ltd. Margao, Salcete-Goa in terminating the services of Shri Allen Fonseca, with effect from 26.5.1980 is legal and justified?

If not, to what relief the said workman is entitled to?"

These four references in which the four workmen are separate but the employer is common are being heard together and are being disposed off by me by writing a common judgment. All these matters are regarding the termination of the four employees by the management of the employer. There is a fifth reference No. IT/28/82 concerning a typist cum clerk of the employer and the point involved therein is that of the transfer to an unsavoury posting which order was not adhered to by the employee. That matter is also being heard together along with these four matters but the same is being disposed off by a separate judgment. However, all these four matters are being heard together along with that matter as the five employees and some more employees who were the active members of the union formed by them were the target of the wrath of the management which started harassing the workmen one after the other. So, the common point made in all these five references is that these are the cases of victimisation and the management had adopted unfair labour practices with a view to harass the workmen. So, as the points involved are common to the extent of victimisation as a result of harassment, on common consent the five matters were clubed together before my predecessor and the evidence of the Administrative Manager of the employer Shri Vaikunt Raikar was recorded in IT/28/82 and this evidence is being considered as common evidence for all the five matters and the matters are being heard together for these reasons. With this initial observation about the nature of the four proceedings I shall go on scanning and analysing the facts of each case initially and thereafter I shall consider the facts together to understand the case of the workmen who are four in number that the management had terminated their services summarily mainly due to their union activities as well as due to the income tax squad raid effected by the Enforcement Branch of I. T. Dept., on the head office of the employer at Margao. The case of the management seems to be that these workmen were instrumental in leaking out the requisite information to the I. T. Dept., through one Malakernekar and the confidential record was secretly made available to the I. T. Dept., by these workman and the henchmen.

While considering the references individually, I find that IT/7/82 pertains to a workman by name Tukaram Prabhu who was appointed by the employer on 5.5.77 and the harassment allegedly started from December, 1979 when the regular work was taken away from him and he was not given any work allegedly because of the formation of the union and the revision of scales of workman as per the agreement dated 14.7.79 between the union and the management. The leave application dated 4.1.1980 was refused and on 23.1.80 this workman was asked to hand over all files.

Thereafter attempt was made to cite this workman as a witness in a theft charge against the then Personnel Officer and upon the refusal of the workmen the harassment started and there was a subsequent incident wherein the M. D. asked the peon to slap this workman. As the peon refused to do so the M. D. himself pushed him against the wall. Not only this, but the M. D. threatened to prosecute him and this workman who was then recently married had to obtain an anticipatory bail from the sessions court. With this background the income tax sqaud raid took place in May, 1st week of 1980. As a result of this, the termination letter dated 26.5.80 was issued to the workman. Thereafter the industrial dispute was raised on behalf of the workman. This is the information which we get from the oral testimony of the workman dated 2.3.1988 and his earlier statement of claim dated 26th Feb., 1982. To this, the management filed the written statement dated 5.4.82 and the workman filed no rejoinder and the issues were framed by my predecessor on 5.7.82. As the pleadings of the employer and the issues are common I shall consider them together subsequently and I shall study the facts of IT/1/82.

The workman concerned therein being one Naguesh V. Mapsekar and whose evidence is recorded for himself and on behalf of others also. This Mapsekar joined the service of the company on 13.4.74 and was posted in the head office. This workman had raised the issue of over time wages and other benefits by uniting the employees in the head office and he was instrumental in the formation of the union in 1977 to ventilate the grievances. The union was named as Fomento Employees' Association. As a result of this

the management through the M.D. started firing and giving threats to the workman. Thereafter at the instance of the then Manager V. P. Raikar the union was dissolved. Thereafter in 1978 out of the total employees of the head office numbering 127 only 40 employees were given the increments and no increments were given to others. This disparity prompted the workers to reunite again and to form a new union by name Fomento Employees' Union, which was formed in January, 1979, registered in March, 1979 and thereafter a charter of demands was raised by the union and the matter went to the Labour Commissioner in Conciliation. A settlement took place on 28.5.79. Thereafter the management which had not liked the settlement started giving humiliating treatment to the workers. Some employees who were office bearers of the union were transferred and Mapsekar who was Jt. Secretary of union was transferred from Accountant Department to Cash Dept. In Cash Dept., Mapsekar was not given any work and was just made to sit idle there. Even without stopping with the harassment of this type the President of the union Suresh Canconkar was terminated from service in August, 1979. Due to this, the workers went on a lightning strike which lasted for 8 days and the office bearers of C.I.T.U. intervened. There was an agreement and strike was withdrawn and workers resumed duties from 28.8.79. Thereafter in October, 1979 the management thought of retrenchment and 9 workers were stated to be surplus and were removed from service. These alleged surplus workers were the President, Vice-president, Secretary, Treasurer and other active members of the union. The industrial dispute was raised before the Labour Commissioner and as there was no progress the workmen again went on strike which was started on 8th Nov., 1979 and withdrawn on 17.11.79 but the workmen actually reported for duty on 19.11.79 the intervening day being Saturday. Till 19.11.79 the management did not allow these workmen to resume work and refused to give them the muster roll for signing. The management simultaneously asked other workmen to issue letters of regret and resigning from the union. Most of the workers gave the letters of regret and resigned from the union while 11 workers remained outside including Mapsekar and these workmen. The management issued order of suspension to these workmen and about Mapsekar the suspension order was followed by a charge sheet dated 25.1.1980. In due course an enquiry was initiated against him. The management in due course of the enquiry offered to drop the enquiry against these 11 workmen if they signed the letter of regret. Accordingly, the 11 workmen signed the letters of regret on 7.2.80. The enquiry proceedings were therefore dropped and the workmen including Mapsekar joined duties in head office. About Mapsekar no work was given to him and he was just made to sit idle. With this stalemate continuing the I.T. raid took place on 2.5.80 and the search of the office premises of the head office continued for three days. The raid took place on Friday and all workers were made to sit outside office till Monday. On Monday this workman and other workmen resumed duties and the management called these workmen into the office enquired with them who had given information to the Income Tax office. The workman remained tight lipped and the management started keeping regular watch on Mapsekar and others thereafter the management desired Mapsekar to stand as witness in the case filed against one Nadkarni. This workman Mapsekar refused to do so and his harassment started. As a result of this, the letter of termination was issued to the workman dated 26th May, 1980. The workman thereafter raised an industrial dispute and the government references came to be made on his behalf and as well as on behalf of the other workmen. This is the information which can be gathered from the evidence of Naguesh Mapsekar recorded by me on 2.3.88 and in the earlier claim statement filed by him before my Predecessor dated 24th February, 1982. While contraverting this statement of claim the management filed its written statement before my Predecessor dated 5th April, 1982 and after the workman filed the rejoinder my Predecessor framed the necessary issues. I shall consider them in due course and I now advert to the claim statement made by Prabhakar K. Kamat in IT/8/82.

This Prabhakar Kamat joined the service on 21.12.70 and he too went on strike along with others in view of the dismissal of Kakodkar and he was suspended along with other on 21.11.79. A charge sheet was issued to him to 25.1.80 and the enquiry was dropped after he agreed to write a letter of regret and actually wrote the letter on 7.2.80. Thereafter the I.T. raid took place on 2.5.80 and the process of giving threats to him and other workers through Administrative Manager V.P. Raikar started. This workman was on leave due to sickness and was hospitalised between 18.5.80 to 26.5.80. The letter of termination dated 26.5.80 was issued to him and was served in the hospital. He raised a similar dispute along with other workman through the union and his dispute is a companion dispute with others. He has adopted the other statement made by Mapsekar & others. He further claims that he has been wrongfully terminated by a person who is not an appointing authority and the termination dated 26.5.80 is unjustified and bad in law.

In IT/9/82 the workman Allen Fonseca claims that he joined the services by appointment letter dated 20.4.77 and he too was a party to the union activity. He also refers to the charter of demands and the settlement dated 28.5.79 and the lighting strike from 22.8.79 which was called off on 29.8.79 after a settlement. About his termination dated 26.5.80 he states that the Administrative Manager V. P. Raikar served him and four others the letter of termination without assigning any reason. Thereafter the industrial dispute was raised which ended in failure. He adopts the other pleadings of the fellow workman.

I shall now see what the management has to say in justification of its action. In the written statement in IT/1/82 dated 5.4.82 in respect of the workman Mapsekar the management refers to the activities of the workman along with the Labour Consultant Nadkarni in the second fortnight of April '90. These workmen and Nadkarni used to meet Malkarnekar one of the Senior Assistant who was removed from services by the company before that. The significance of this secret meetings in the record office at adjoining Gosalia Building was known when IT raid was conducted on the head office on 2.5.80 which lasted till 4.5.90. According to the management these four workman and Nadkarni who is incidentary the Labour Consultant of these workmen and Malkarnekar were instrumental in the IT raid on the Madgaum head office and on the residences of the Directors, Managing Director, certain other executives and other officers of the company. The management suspected that these people had given false destorted information to the raiding parties. And this was aimed at defaming and harassing the company. So the management removed the workmen from service and they justified the action on the ground of the loss of confidence. The management claims that there was adequate material before the management to come to the conclusion of having lost confidence with the workmen and they claim that the action taken by the management is legal, proper, justified and bonafide. According to them the formation of the union or the alleged union activity have nothing to do with the

Order of termination. They further states that V. P. Raikar was authorised to issue the termination letter and he was competent to do so as Raikar has validly terminated the services of the workmen.

This is the common stand taken by the management in IT/1/82 and in the companion proceedings. With the rival contentions my Predecessor framed the necessary issues and the parties went on trial. The question is whether the order of termination issued by the administrative Manager is bad in law. The second question is whether the termination of the services by the employer is due to victimization for the trade union activities of the employees. The next question then is whether the termination simplicitor without following the procedure of show cause notice and conducting departmental enquiry is an act of retrenchment and in that case whether the procedure led down under section 25F of the Act. Lastly it has to be seen whether the action of the management is justified on the ground of loss of confidence.

The workman Mapseker in IT/1/82 joined service on 1.5.74 and he was paid compensation and notice pay by bank draft. The workman T. Prabhu in IT/7/82 joined on 16.5.77 and he was paid compensation and notice pay by bank draft. The workman in IT/8/82 by name P. Kamat joined on 3.11.70 and he was similarly paid compensation and notice pay by bank draft. The workman in IT/9/82 who joined on 2.5.77 was not confirmed in service being on probation and temporary still compensation and notice pay was paid to him by bank draft. According to the management the order of termination dated 26.5.80 does not cast any stigma on the workman and that it is a simple order of the termination in terms of contract of employment and the four workers were retrenched and at the time of termination they were paid notice pay and compensation by a bank draft. According to the management this payment by bank draft is in full compliance with Section 25 F as held by Madras High Court in the case of Industrial Chemicals reported in 1977 FLR (34) Page 403. According to the management simple termination on ground of loss of confidence under term of contract of employment does not make the order by way of punishment and such an order falls within the definition of retrenchment as observed by the Bombay High Court in 1938 LAB I. C. page 1396. According to the management the contract of employment provided for termination by one month's notice and payment of notice pay. So the management claims that it has duly and properly compiled with Sec. 25 of the Act and the four termination do not call for any interference.

As observed in the foregoing paragraph the main question is whether the order of termination is the order of retrenchment and whether the provisions under sub clauses A & B namely payment of notice pay and retrenchment compensation are duly compiled with or not. All the four workmen have received the amount of compensation by bank draft and such a payment is a valid payment and it cannot be said to be a deferred payment. So the main question is whether the management can summarily terminate the services of its employee by offering the notice pay and whether such a summary disposal accompanied by the bank order for compensation would mean that the provisions of Sec 25 F of the Act is duly compiled with or not. While challenging this claim of the management Shri Nadkarni the learned Labour Consultant argued that three workmen were terminated by the order dated 26.5.80 while the fourth one was served with the notice subsequently on 28.5.90 while he was in the hospital. The income tax raid took place between 2nd May to 4th May 80 and the action of termination is taken immediately thereafter. The management also does not make a secret of the fact that the termination was made on the ground of loss of confidence due to the hand of the workmen in giving secret information to the IT raiding parties. The workmen in the first three references were served with the termination order at 5.00 p. m. on 26th May and were relieved at 5.30 p. m. after the closure of the office. The fourth workman received the order on 28th May though he was stated to be terminated on 26th May. So, the day of termination and the day of the receipt of the order of termination is different and actually the workman received the order two days after the due date. This position has also to be taken into consideration while considering the legal aspect of the orders of termination.

About the order of termination the management claims that the four workmen were found unworthy of employment and orders of termination were issued to them. It appears that the theory of the 'loss of confidence' is introduced subsequently and reliance is placed on the episode of Income Tax raid. What is claimed by the management is that the terminations are terminations simplicitors and the management has a right to terminate the services with one month's notice as per the letter of appointment which is a contract according to them. So, such termination is permitted under the contract and no enquiry is necessary, according to them. So what is reiterated on behalf of the management is that this tribunal has to see whether the provisions of Sec. 25 F of the Act are followed or not and if they are followed then the terminations are legal. All the workmen have accepted the compensation and notice pay offered to them by the management and the management claims that the notice pay and compensation were offered and paid by bank order and the provisions of sub. sec. (a) and (b) of Sec. 25F of the Act are duly and properly complied with by them. While contraverting this position Shri Nadkarni claims that the workman in IT/8/82 was terminated on 26.5.80 while the order was served on him on 25.8.80, while he was in the hospital.

The case of loss of confidence is introduced subsequently while initially the management had claimed that the orders of termination simplicitors were issued by offering the compensation and this was just a termination before or without issuing a show cause notice, issuing a charge sheet and holding an enquiry because all the four workmen are permanent employees. According to him the termination simplicitor is an illegal termination and even the provisions of retrenchment are not attracted. According to him loss of confidence clause is added subsequently. So, while analysing the rival contentions this tribunal will have to see whether the impugned orders are the orders of termination simplicitors, whether they are the orders of retrenchment as claimed by the management as in that case it has to be seen whether the provisions of Sec. 25F of the Act are duly and properly complied with. On this point certain norms have been laid down by the Supreme Court in the case reported in 1975-I LLJ page 262. In that case where there was the order of discharge simplicitor the employer pleaded loss of confidence in the employee but no evidence for such loss of confidence was forthcoming. The Supreme Court have observed that subject to satisfaction of the employer is not enough but objective test is necessary. In this regard certain norms have been laid down by the Supreme Court

and I shall analyse the position viz-a-viz the order of termination issued on 25.5.80 but terminating the services of the workmen immediately on the next day but the pay of one month in lieu of notice pay was offered and paid to the workmen. It has to be seen whether such a payment is a sufficient compliance of the provisions of Sec. 25F sub-clauses (a) and (b).

In the above Supreme Court where the management made out a case of loss of confidence found that there was no proof with it for this suspicion and it could not proceed against the workman departmentally. The facts in that case are almost analogous to the facts in the present case similar to that case the management felt that these four workmen were the leaders of the group which had taken effective part in giving and supplying information to the raiding party and they were constantly in touch with Malkernekar in the adjoining Gosalia Building and a sort of whispering campaign was going on with them and the clerk Terezinha was also in hand in glow with them. These facts and the theory propounded by the management show that the management had suspected these 5 workmen and others but they did not have positive proof with them. So what the management did do was to transfer Terezinha to some unsavoury place and issued termination orders to these four workmen. In the above Supreme Court case the workmen Micheal and others who had a long standing service were terminated by giving one month's notice pay on the ground of loss of confidence. The management's contention was upheld by the Labour Court holding that it was a discharge simplicitor and no stigma whatsoever was attached to any of the workmen. Similar is the position in the present case where management claims that this is a discharge simplicitor and nostigma whatsoever is is attached to the workmen. In that case the Labour Court upheld the contention of the management and the workmen had gone to the Supreme Court by way of appeal. The Supreme Court held that the Labour Court had mis-led itself on the point of law, set aside the order of reinstatement with the observation that the management was free to proceed against the workmen for mis-conduct or on other grounds valid in law. In other words the Supreme Court held that if there is a case of mis-conduct and loss of confidence the management should issue a show cause notice followed by a charge sheet and thereafter deal with the case according to law. In the case of Rohtas Industries v. Ali Hasan reported in 1953 I LLJ page 253, the Supreme Court have stated that an enquiry is not an empty formality but it is an essential condition to the legality of the disciplinary order. In other words it means that a fair and regular enquiry should be held into the misconduct and for that purpose there should be a proper enquiry held against the workmen. In the instant case, no such enquiry is held and the four workmen are straight away terminated with immediate effect and the compensation, notice pay etc., are offered belatedly. It is no doubt true that the workmen have accepted the amount of compensation paid to them. However, the question is whether acceptance of such compensation deprives them of their right to challenge the termination. In a Bombay case reported in 1988, LAB. I. C. page 1396, the non compliance with provisions of Sec. 25F is held to be illegal. In a Madras case wherein many Supreme Court cases are discussed while holding that the termination was not in compliance with either Sec. 25F or 25G of the Act, the Court observed that "It is open to the Labour Court, in exercise of its jurisdiction, to take note of the several circumstances in the particular case before it and decide not to grant the relief of reinstatement, but grant instead relief by way of compensation to the workman. It is this principle on which Section 11A of the Industrial Disputes Act also is based." I propose to follow the above observations and I feel that it is better to grant relief to the four workmen by way of compensation instead of the grant of relief of reinstatement, for a variety of reasons. The workmen are gainfully employed elsewhere after the termination and in a way they have acquiesed into the termination by accepting the compensation offered to them by a demand draft or by bankers pay order. I have already discussed in details the amount of compensation received by each workman and the case turns out to be a case for consideration of the legality of the termination more or less for an academic purpose. So, when the order of termination is held to be not just and legal and when there is a question of using the discretion u/s 11-A of the Act, the question coming to the fore-front is the grant of compensation and what criteria should be applied to the grant of such compensation. I feel that the length of service put up by each workman before the day of termination should be taken into consideration and I propose to grant the compensation which is a gross compensation to each workman at the rate of Rs. 1000/- for every year's service put up by each workman next before the termination of his service. So, instead of directing reinstatement, I propose to grant the gross compensation to each workman as below:

In IT/1/82, the workman N. Mapsekar joined the service on 1.5.1974. He has been paid the compensation including the notice pay. The services are terminated in May, 1980, so I grant him the compensation for 6 years which comes to Rs. 6000/- (Rupees six thousand only).

In IT/7/82, the workman Tukaram R. Prabhu joined the service on 16.5.77 and he who is self employed and who was working with other company also while serving with the opponent company has in the written arguments has claimed compensation and is not interested in reinstatment. He was similarly terminated in May, 1980. So he is entitled to the compensation at the rate of Rs. 1000/- for every years' service which comes to Rs. 3000/-(Rupees three thousand only).

In IT/8/82, the workman P. Kamat joined the service on 3rd Nov., 1970 and he is similarly terminated on 26th May, 1980. So, he is entitled to compensation for 9 years, service which comes to Rs. 9000/-(Rupees nine thousand only).

In IT/9/82 the workman Allen Fonseca joined the service on 2.5.77 and he was similarly terminated on 26th May, 1980. So he is entitled to a compensation for 3 years' service which comes to Rs. 3000/- (Rupees three thousand only).

It has to be noted pertinently that the abrupt terminations took place in May, 1980 and the matters are being disposed off in 1990 and since then much water had flown below the bridge. I find that all the four workmen are gainfully employed elsewhere since their termination. The workman Mapsekar is working with Rao Rege while T. Prabhu who is self employed has claimed compensation instead of reinstatement. The workman P. Kamat is not capable of being employed anywhere and he is getting the highest compensation amongst the four. The workman A. Fonseca who has the shortest service is re-employed in the very year of termination at the salary of Rs. 2000/-per month against his previous salary of Rs. 572/- p. m. So considering all the four cases

collectively or individually, I feel that while deciding the cases well after ten years it would be just and proper to award additional compensation to each workman because each of them was offered and paid the compensation as per sub. clauses (a) and (b) as per S. 25 F of the Act and what is now being paid is additional compensation by using my discretion u/s 11-A of the Act. I, therefore, answer the above government references accordingly and pass the following order :

ORDER

No. IT/1/82

It is hereby held that the termination of the services of the workman Naguesh V. Mapsekar by the management of M/s Sociedade de Fomento Pvt. Ltd., Margao, w. e. f. 26.5.80 is not just and legal. By way of relief instead of directing his reinstatement into service the management of the Opponent Company is directed to pay him a compensation of Rs. 6000/-(Rupees six thousand only) immediately. The workman is not entitled to any other relief in this matter of government reference.

No. IT/7/82

The termination of the services of the workman Tukaram R. Prabhu by the management of M/s Sociedade de Fomento Pvt. Ltd., Margao, is held to be not just and legal. Instead of directing his reinstatement into service the management of the Opponent Company is directed to pay him a compensation of Rs. 3000/-(Rupees three thousand only) immediately. The workman is not entitled to any other relief in this government reference.

No. IT/8/82

The termination of the services of the workman Prabhakar K. Kamat by the management of M/s Sociedade de Fomento Pvt. Ltd., Margao, w. e. f. 26.5.80 is held to be not just and legal. Instead of directing his reinstatement into service the management of the Opponent Company is directed to pay him a compensation of Rs. 9000/-(Rupees nine thousand only) immediately.

No. IT/9/82

It is hereby held that the termination of the services of the workman Allen Fonseca by the management of M/s Sociedade de Fomento Pvt. Ltd., Margao, w. e. f. 26.5.80 is not just, proper and legal. Instead of directing his reinstatement into service the management of Opponent Company is directed to pay him a compensation of Rs. 3000/- (Rupees three thousand only) immediately. He is not entitled to any other relief.

There shall be no order as to costs. Inform the Government accordingly about the passing of the award.

S. V. Nevagi
Presiding Officer
Industrial Tribunal

Finance (Revenue and Control) Department

Order

No. 6-4-89-Fin (R&C)

Read : Memorandum No. 6/4/91-Fin (R&C) dated 6-3-1991.

On the recommendation of the Goa Public Service Commission vide its letter No. COM/I/5/43 (1)/89 dated 6.2.1991, Shri Joaosinho Vaz is hereby appointed to the post of Sales Tax Officer (Group 'B' Gazetted) in the pay scale of Rs. 2000-60-2300-EB-75-3200-100--3500 in the office of the Commissioner of Sales Tax Panaji with effect from the date of his joining the post. He will be also entitled for all other allowances admissible to the employees of this State from time to time.

2. The appointment is made against the post created vide order No. 6/6/81-Fin (R&C) dated 11-9-1981 and continued from time to time.

3. He shall be on a probation for a period of two years.

4. Shri Vaz is posted at Sales Tax Office, Curchorem ward, Curchorem.

5. The expenditure is to be debited to the Budget Head of Accounts "2040- Sales Tax, 101 - Collection Charges, 01 - District Establishment, 01 - Salaries (Non Plan)"

By order and in the name of the Governor of Goa.

Prabha Chandran, Under Secretary (Fin. Exp).

Panaji, 20th September, 1991.

Law (Establishment) Department

Order

No. 2-14-81/LD

Read : 1. Notification No. 2-14-81/LD dated 7-3-90.
2. Order No. 2-14-81/LD dated 10-5-90.
3. Order No. 2-14-81/LD dated 2-5-91.

In partial modification of the Government Order of even numbers dated 7-3-90 and 2-5-91, for item at Sl. No. (4) the name of Shri Shambhu B. Bandekar, representative of SC/ST shall be substituted and the name of Shri Jose Francisco Gomes shall be added after Sl. No. 6.

This order shall come into force with immediate effect.

By order and in the name of the Governor of Goa.

A. S. Awale, Under Secretary (Law).

Panaji, 20th September, 1991.

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